

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 31.01.2013

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EFA (OS) No. 6 of 2012

SUSHIL KUMAR GUPTA

....APPELLANT

Through: Mr. Suryakant Singla, Adv.

Versus

SMT. PREM GUPTA & ORS.

....RESPONDENTS

Through: Mr. H.L. Tiku, Sr. Adv. with
Ms. Yashmeet Kaur, Adv. for R-10.
Mr. Vikrant Pachnanda, Adv. for
Mr. Najmi Waziri, Standing Counsel,
GNCTD.
Mr. Satinder Singh, LDC from the O/o the
Collector of Stamps.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MS. JUSTICE INDERMEET KAUR

SANJAY KISHAN KAUL, J. (Oral)

1. The “Gupta” family was carrying on business under a partnership firm known as Deoki Nandan & Sons. Disputes arose *inter se* the family members including qua immovable property where the parties were residing known as 1, Tughlak Lane, New Delhi. A reference was made vide order dated 18.11.1985 in Suit No.2164A/1985 for resolution of disputes to the sole arbitration of Mr. Justice Jaswant Singh (Retd.) who made and published an award dated 8.6.1988. One of the issues framed before the arbitrator was as under:

“7. Whether equal physical division of the property namely I-Tughlak Lane, New Delhi amongst four parties with separate titles is possible/equitable? If not, in what manner it can be best sold/disposed off? (Onus on parties).”

2. The findings on this issue were recorded by the arbitrator after obtaining a report from an architect as also a response from the Land & Development Office, Government of India, being the perpetual lessor. The result of the aforesaid was that the land was found earmarked for group housing building and sub-division of the plot was not permitted. It was, thus, opined by the learned arbitrator that equal physical division amongst the four parties with separation of title was not possible. The alternative proposal for development of the property, in the absence of consent, was also not feasible and, thus, the only methodology for disposal of the property was by public auction in which even the parties would be free to offer their bids.
3. The aforesaid award was filed in Court to which objections were filed which were dismissed and the award was made rule of the court on 17.9.1990 in the earlier suit proceedings. The appeal against the same were dismissed on 18.9.1991.
4. The matter did not end at this as second round of litigation started in the execution proceedings. It appears that prior to the execution proceedings, being Execution Petition No.63/1993, some of the co-owners entered into an agreement to sell for transfer of their rights under the decree and that is how respondent No.10 came into the picture. The appellant is holder of 25 per cent share while respondent No.9 is the holder of remaining 25 per cent share. It is not, however, necessary to go into further details qua these execution proceedings but suffice it to say that an application came to be filed, being EA No.590/2009, by respondent No.10/Titan Estates Private Limited qua the issue of stamp duty to be filed for preparation of decree sheet arising from the award being made rule of the court.
5. The learned Single Judge in terms of the order dated 20.4.2011

considered it appropriate to issue notice to the Stamp Collector, Delhi and the Chief Controlling Officer to give a valuation report. It is this valuation report submitted by the Tehsildar from the Office of the DC, New Delhi which has given rise to the impugned order dated 20.12.2011. The learned Single Judge opined that on the basis of the valuation the stamp duty would have to be calculated on 1 per cent of the value referred to of ₹6,33,99,000.00 and, thus, ₹6,36,192.00 has to be paid as stamp duty.

6. The common submission of the learned counsel for the appellant and respondent No.10 is that the calculation of the stamp duty payable appears to be under misconception of legal provisions of the Indian Stamp Act, 1899 (hereinafter referred to as the 'said Act') as also the judicial pronouncements of this Court.
7. In respect of the aforesaid a reference has been made to Section 3 (a) of the said Act, which reads as under:

“3. Instruments chargeable with duty

Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say-

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in [India] on or after the first day of July, 1899;”

8. Learned counsels have thereafter invited our attention to Article 45 of Schedule 1 which deals with instruments of partition and states that the stamp duty is payable as is payable on a bond under Article 15. Learned counsel has thereafter in the aforesaid context referred to Section 2 (15) which defines an 'instrument of partition' as under:

“2. Definitions

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(15) "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue-authority or any civil court and an award by an arbitrator directing a partition;”

9. It is, thus, the submission of the learned counsels that in the present case the award which is made rule of the court cannot be treated as an instrument of partition as it does not divide or agree to divide a property in severalty. It is submitted that, in fact, even the shares of the parties were not in dispute but the assets of the partnership were to be divided and what has to be found out whether the immovable property was divisible by metes and bounds and if such division by metes and bounds had been occasioned then only the decree would be required to be stamped as an instrument of partition.
10. Learned counsels have relied upon the judgement of the Division Bench of this Court in K.N. Khanna Vs. B.K. Khanna (Deceased) Through LRs 87 (2000) DLT 286 (DB) to advance the said proposition. The factual matrix was quite similar inasmuch as property known as No.22, Amrita Shergil Marg, New Delhi being a leasehold property was subject matter of dispute. The matter was referred to arbitration where the arbitrator so appointed opined that the property was not capable of being partitioned by metes and bounds and, thus, the only course open was to sell the property and divide the sale proceeds (again an identical fact). The house had been built for a single family and, thus, could not have been divided

into two halves. A specific issue was framed and a conclusion reached that it was not feasible to divide the property into two portions. In the execution proceedings a specific issue was framed whether the decree had been engrossed on non-judicial stamp paper and, thus, could it be put to execution unless so engrossed. The specific issue No.4 framed is as under:

“(4) What is the effect of the decree if the same has not been engrossed on a non-judicial stamp paper?”

11. The discussion qua the aforesaid issue is contained in paragraphs 40 & 41 which are reproduced hereinunder:

“40. There is no manner of doubt that in a suit for partition after a preliminary decree is passed declaring rights, title or interest of the parties, which decree makes a provision for partition of the suit property by metes and bounds and of separate possession in terms of the rights declared under the said decree, which has to be treated as preliminary, further inquiry is required to be held to enable the Court to finally and conclusively determine rights of the parties by actually partitioning the said property by metes and bounds. In order to do so, usually the task is assigned to a Commissioner to suggest mode of partition, who usually suggests the mode and manner of dividing the property. On receipt of such a report and deciding objections of the parties, if any, the Court then proceeds to pass a final decree declaring the persons entitled to separate shares, which enable the parties thereafter to hold and enjoy the property separately. Such a division of the property has the effect of creation of an exclusive right of a person in that portion of the property, which falls to his share and extinguishes his right, title or interest in those portions, which fall the exclusive shares of the others. This decree of course would be covered by the definition of "instrument of partition", as defined in Clause (15) of Section 2 of Indian Stamp Act. "Instrument of partition" is defined therein to mean any instrument whereby co-owners of any property divide or agree to divide such property in severality, and include also a final order for effecting a partition passed by any Revenue Authority or any Civil Court and an award by an Arbitrator directing partition. In case partition is effected of a

property even by an Arbitrator by his award, the same would fall in the definition of "instrument of partition". So also a decree of Civil Court affecting partition of the property would fall in the said definition and the same would be required to be stamped according to the provisions of Indian Stamp Act.

41. But it is not that every decree in a partition suit would be required to be drawn up on a stamp paper. Only those decrees will be required to be drawn up on a stamp paper, which divide any property in severality amongst co-owners. In the instant case neither by award made by C.K. Daphtary nor by order dated 15-4-1983 the property has been ordered to be divided or agreed to be divided in severality. Only a tentative arrangement was made for enjoying the property separately, which was only a temporary measure whereby the parties continued to be the joint owners of each and every part of the property though separately enjoying separate portions. The decree nowhere provided for separation or division of the property in severality since it was held that the property is incapable of being divided in two equal shares or that the division by metes and bounds was not possible. Therefore, the mode suggested was to sell the property and then divide sale proceeds in equal shares. Such an award or a decree would not come within the definition of "instrument of partition", pursuant to the said decree passed in the suit, in case the property is sold, the rights, title and interest of the appellant and the respondents would come to an end, on sale deed being drawn and executed on a stamp paper, after the sale is confirmed by the Court. Only the said instrument of sale will be required to be stamped and thereafter got registered. Such a decree as was passed on 15-4-1983, is not required to be drawn on a stamp paper. Only such of the decrees are required to be drawn on a stamp paper, which allot and vest particular share in each co-sharer and not those decrees, which only make a provision for sale of the property. In later decrees only the instrument of sale would be required to be drawn on a stamp paper so as to vest exclusive rights in the property in favour of the auction purchaser."

(emphasis supplied)

12. In our view the issue raised in the present appeal is really no more *res integra* in view of the aforesaid discussion. It has already been

held in the aforesaid judgement that there has to be conclusive determination of rights by actually partitioning the property by metes and bounds for it to be engrossed on non-judicial stamp paper. This would facilitate holding an enjoyment of property separately and exclusive rights in the respective portions which would amount to an instrument of partition. Every decree in partition suit would not require to be drawn up on stamp paper and if there is no such division but on the other hand the property is sold, the rights, title and interest of the property would come to an end on the sale deed being drawn and executed on a stamp paper. It is only such instrument of sale which would be required to be stamped and thereafter got registered.

13. In fact, learned counsel for the Government of NCT of Delhi fairly states, on instructions received, that having examined the matter in the conspectus of the aforesaid judgement the opinion of the Collector of Stamps is also that the award/decreed in the present case would not require to be stamped but it is the sale deed which would have to be executed post auction or any other mode of disposal for it to be required to be properly stamped.
14. The result of the aforesaid is that the impugned order is set aside holding that there would be no requirement of the decree being engrossed on a non-judicial stamp paper as it is not an instrument of partition, there being no division by metes and bounds of the property.
15. At request of learned counsel for respondent No.10 we clarify that though initially there were two aspects to be examined in the appeal as noticed in the order dated 22.2.2012, the subsequent order dated 14.3.2012 records that the other aspect does not remain alive as the

property is now to be put to public auction.

16. The appeal is accordingly allowed leaving the parties to bear their own costs.
17. The Registry to prepare the decree sheet accordingly.

SANJAY KISHAN KAUL, J.

JANUARY 31, 2013
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INDERMEET KAUR, J.